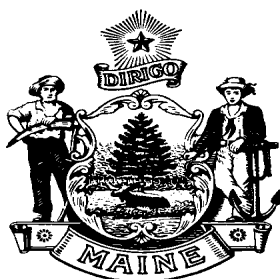


**REGULATIONS GOVERNING THE LICENSING
AND
FUNCTIONING
OF
ASSISTED HOUSING PROGRAMS**

Level III Residential Care Facilities



Effective Date

September 1, 2003

**DEPARTMENT OF HUMAN SERVICES
BUREAU OF ELDER AND ADULT SERVICES**

ASSISTED LIVING LICENSING SERVICES

REGULATIONS GOVERNING THE LICENSING AND FUNCTIONING OF ASSISTED HOUSING PROGRAMS

LEVEL III RESIDENTIAL CARE FACILITIES

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1 PURPOSE

These rules establish minimum standards for the licensing of assisted housing programs that provide assisted housing services defined as Level III residential care facilities . Assisted housing services is the provision of housing, assistance with activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities. The regulations support services that are individualized to meet resident needs and encourage each resident's right to independence, choice and decision-making, while providing a safe environment. Assisted housing services may be provided in:

- 1.1 Independent housing with services programs;
- 1.2 Assisted living programs; and
- 1.3 Residential care facilities.

2 DEFINITIONS

The following terms have the meanings as specified.

- 2.1 “**Abuse**” means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation, or the willful deprivation of essential needs.
- 2.2 “**Activities of Daily Living (hereinafter ADLs)**” means tasks routinely performed by a person to maintain bodily functions, including bed mobility, transfers, locomotion, dressing, eating, toileting, bathing and personal hygiene.
- 2.3 “**Adult Day Services**” means the care and supervision of consumers who attend the facility during daytime or nighttime hours but are not residents of the facility.
- 2.4 “**Advance Directives**” means a document signed by the resident, guardian or agent under durable power of attorney, giving or withholding consent or approval related to medical or other professional care, counsel, treatment or service for the resident, in the event that the resident becomes unable to provide that direction.
- 2.5 “**Aging in Place**” means a program of services provided in assisted housing programs that furthers the independence of the resident and respects the privacy and personal choices of the resident, including the choice to continue to reside at home for so long as the assisted housing program, as it is fundamentally designed, is able to meet the needs of the resident. Assisted housing programs provided to residents must be consumer oriented and meet professional standards of quality.
- 2.6 “**Alzheimer’s/Dementia Care Unit**” means a unit, facility or distinct part of a facility that provides care/services in a designated, separated area for residents with Alzheimer’s disease or other dementia. The unit, facility or distinct part provides specialized programs, services and activities, and is locked, segregated or secured to provide or limit access by residents inside and outside the designated or separated area.

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- 2.7** **“Applicant”** means the person who owns the facility and is applying for a license, or the person who is applying for a license pursuant to a valid lease agreement, contract or other agreement with the owner of the building that delineates the roles and duties under these rules.
- 2.8** **“Assisted Housing Program”** means an independent housing with services program, an assisted living program or a program of housing and services provided by a residential care facility.
- 2.9** **“Assisted Housing Services”** means the provision by an assisted housing program of housing, activities of daily living and instrumental activities of daily living, personal supervision, protection from environmental hazards, meals, diet care, care management and diversional or motivational activities. These services are further defined as follows:
- 2.9.1** Personal supervision, meaning awareness of a resident’s general whereabouts, even though the resident may travel independently in the community; and, observation and assessment of each resident’s functioning or behavior to enhance his or her health or safety or the health or safety of others;
- 2.9.2** Protection from environmental hazards, meaning mitigation of risk in the physical environment to prevent unnecessary injury or accident;
- 2.9.3** Assistance with Activities of Daily Living and Instrumental Activities of Daily Living;
- 2.9.4** Diversional, motivational or recreational activities, meaning activities which respond to residents’ interests or which stimulate social interaction, both in individual and group settings;
- 2.9.5** Dietary services, meaning the provision of regular and therapeutic diets that meet each resident’s minimum daily food requirements, as defined by the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;
- 2.9.6** Care Management Services, meaning a process of working with a resident to identify his/her needs and strengths, develop a service plan and arrange for and monitor service delivery.
- 2.10** **“Assisted Living Program”** means a program of assisted living services provided to residents in private apartments in buildings that include a common dining area, either directly by the provider or indirectly through contracts with persons, entities or agencies. The types of assisted living programs governed by these regulations include:
- 2.10.1** Type I - an assisted living program that provides medication administration directly or indirectly through contracts with persons, entities or agencies.

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- 2.10.2** Type II - an assisted living program that provides medication administration and nursing services directly or indirectly through contracts with persons, entities or agencies.
- 2.10.2.1** Services of a Registered Professional Nurse; and/or
- 2.10.2.2** Registered Professional Nurse coordination and oversight of consumer services provided by unlicensed health care assistive personnel.
- 2.11** **“Assisted Living Services”** means the provision by an assisted housing program, either directly by the provider or indirectly through contracts with persons, entities or agencies, of assisted housing services with the addition of medication administration or medication administration and nursing services, defined as follows:
- 2.11.1** **“Administration of medications”** means services such as reading labels for residents, observing residents taking their medications, checking the dosage, removing the prescribed dosage, filling a syringe and administering insulin and bee sting kits (when permitted) and the maintenance of a medication record for each resident;
- 2.11.2** **“Nursing services”** means services provided by professional nurses licensed pursuant to Title 32, section 2102, subsection 2. It includes coordination and oversight of resident care services provided by unlicensed health care assistive personnel.
- 2.12** **“Certified Nursing Assistant (CNA)”** means a person who has successfully completed a training program or course with a curriculum prescribed by the Maine State Board of Nursing or is deemed to have had comparable training according to regulations established by the Maine State Board of Nursing, and whose duties are assigned by a registered professional nurse, and who is currently listed on the Maine Registry of Certified Nursing Assistants.
- 2.13** **“Certified Nursing Assistant/Medications (CNA/M)”** means a Certified Nursing Assistant who has satisfactorily completed the standardized medication course for Certified Nursing Assistants, the curriculum for which is prescribed by the Maine State Board of Nursing.
- 2.14** **“Deficiency”** means a violation of State licensing regulations.
- 2.15** **“Dementia”** means an acquired loss of intellectual functioning (primarily abstract thinking, memory, and judgment) of sufficient severity to interfere with a person’s ability to act independently and perform routine daily activities. Symptoms of dementia can include memory loss and the loss or diminution of other cognitive abilities, such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself. Dementia is not a disease in and of itself but rather a group of symptoms that accompanies certain diseases and conditions. Dementia can be caused by such diseases as Alzheimer’s Disease, Pick’s Disease, Amyotrophic Lateral Sclerosis (ALS), Parkinson’s Disease, Huntington’s Disease, Creutzfeldt-Jakob Disease, multi-infarct dementia, etc.

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- 2.16** “**Department**” means the Maine Department of Human Services.
- 2.17** “**Directed Plan of Correction**” means a Plan of Correction issued by the Department which directs how and when to correct cited deficiencies.
- 2.18** “**Distinct Part**” means a physically separate unit that is clearly identifiable from the remainder of the facility. Various beds scattered throughout the facility would not comprise a “distinct part”. The “distinct part” of a facility provides a level of care distinguishable from other levels of care in the institution.
- 2.19** “**Duly Authorized Licensed Practitioner**” means an individual currently licensed in the State of Maine as a physician, physician’s assistant or nurse practitioner.
- 2.20** “**Emergency**” means either those events that demonstrate that a resident has an urgent medical or psychological need, which requires immediate acute care treatment, poses imminent danger to other residents or a natural disaster, which damages or interrupts vital services to residents or the integrity of the physical plant.
- 2.21** “**Exploitation**” means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another’s profit or advantage.
- 2.22** “**Failure to Make Timely Correction of Any Deficiency**” means that a provider has not remedied a deficiency within the time frame established in a Plan of Correction or Directed Plan of Correction, or, if any extension has been granted by the Department, within the time frame of that extension.
- 2.23** “**False Information**” means any written or verbal statement or representation of fact that is not true and that was made intentionally, knowingly or without having taken reasonable steps to ascertain whether or not the information was true.
- 2.24** “**Food Preparation Area**” means an area for storing and preparing food in an individual’s apartment. This area must include, as a minimum, six (6) square feet of clear countertop, a small refrigerator, bar-type sink, a cabinet for food storage and either two stovetop burners or a microwave oven.
- 2.25** “**Functional Assessment**” means a comprehensive evaluation of an individual’s health, social, environmental, financial and family or community supports, which will determine the strengths and needs of the individual.
- 2.26** “**Impede or Interfere with the Enforcement of Regulations**” means a failure to provide information to the Department that is necessary to determine compliance with licensure regulations or a failure to allow the Department access to an Assisted Housing Program or any part thereof.
- 2.27** “**Independent Housing with Services Program**” means a program of assisted housing services provided to residents in private apartments in buildings that include a common dining

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- area, either directly by the provider or indirectly through contracts with persons, entities or agencies.
- 2.28** “**Instrumental Activities of Daily Living (hereinafter IADLs)**” includes, but is not limited to, preparing or receiving of a main meal, taking medication, using the telephone, handling finances, banking, shopping, routine housework, laundry and getting to appointments.
- 2.29** “**Legal Representative**” means a guardian, conservator, agent under durable power of attorney, representative payee, or other person authorized by law, whose authority extends to the matter under consideration and who has provided the facility with documentation of their legal authority.
- 2.30** “**Licensee**” means the person to whom a license is issued.
- 2.31** “**Licensed Administrator**” means an individual who holds a valid administrator license issued by the Nursing Home Administrators Licensing Board pursuant to rules adopted under Title 32 M.R.S.A. § 61.
- 2.32** “**Licensed Health Care Professional**” means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with Maine State law.
- 2.33** “**Medication Error**” means the administration of any medication incorrectly, e.g. dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication, error in documentation or the administration of a medication without a valid order.
- 2.34** “**Neglect**” means a threat to an adult’s health or welfare by physical or mental injury or impairment, deprivation of essential needs or lack of protection from these threats.
- 2.35** “**Person**” means any individual, owner, corporation, partnership, association, governmental subdivision or any other entity.
- 2.36** “**Pharmacist**” means an individual currently licensed as a registered professional pharmacist in the State of Maine.
- 2.37** “**Physician**” means an individual currently licensed to practice medicine or osteopathy in the State of Maine.
- 2.38** “**Plan of Correction (hereinafter POC)**” means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates.
- 2.39** “**Private Apartment**” means a private dwelling unit with an individual bathroom, bedroom and a food preparation area.
- 2.40** “**Provider**” means the licensee.

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- 2.41** “**Psychotropic Medications**” means antipsychotic agents, major tranquilizers, antidepressant agents, anxiolytic agents and hypnotic agents.
- 2.42** “**Qualified Consultant Dietitian**” means an individual who is currently licensed to practice dietetics in the State of Maine.
- 2.43** “**Qualified Interpreter**” means an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- 2.44** “**Registered Nurse**” or “**Registered Professional Nurse (hereinafter RN)**” means an individual who is currently licensed by the Maine State Board of Nursing to practice professional nursing.
- 2.45** “**Related by Blood or Marriage**” means spouses, parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nephews, nieces, and step-relations.
- 2.46** “**Repeated Deficiency**” means a violation of a rule more than once in a two (2) year period.
- 2.47** “**Resident**” means any person eighteen (18) years of age or older, who is not related by blood or marriage to the owner or person in charge of the facility or building in which the resident lives and who receives assisted housing services. Any person seventeen (17) years of age, with written permission from the Department, may be a resident.
- 2.48** “**Resident Rights**” means those rights enumerated in Title 22 M.R.S.A. § 7921 et. seq. and 22 MRSA §7853(6) which apply to assisted living programs, and also they’re enumerated in Section 5 of these regulations.
- 2.49** “**Residential Care Facility**” means a house or other place that, for consideration, is maintained wholly or partly for the purpose of providing residents with assisted living services. Residential care facilities provide housing and services to residents in private or semi-private bedrooms in buildings with common living areas and dining areas. It does not include licensing nursing homes or a supported living arrangement certified by the Department of Behavioral and Developmental Services. Following are the types of residential care facilities:
- 2.49.1** Level I - a facility with a licensed capacity of one (1) to two (2) residents.
- 2.49.2** Level II - a facility with a licensed capacity of three (3) to six (6) residents.
- 2.49.3** Level III - a facility with a licensed capacity of three (3) to (6) residents and which employs three (3) or more persons who are not owners and are not related to the owner.
- 2.49.4** Level IV - a facility with a licensed capacity of more than six (6) residents.

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- 2.50** “**Residential Services Plan**” means a written service plan developed with a resident, based upon an assessment of the resident’s needs and abilities and including (as appropriate) habilitative or rehabilitative goals and objectives, program goals and objectives and the resources and methods necessary to implement the plan.
- 2.51** “**Restraints**” means any device or other means, except mechanical supports used in normative situations to achieve proper body position and balance:
- 2.51.1** Which is intended to restrict freedom of movement or access to one’s body; or
- 2.51.2** Any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.
- 2.52** “**Self-Administration of Medication**” means a resident takes his/her own medication(s) independent of a staff person obtaining the medication for the individual.
- 2.53** “**Shared Staffing**” as defined in 22 MRSA Section 7860 means the use of licensed and unlicensed personnel who are employed, directly or under contract, by a long term care facility in more than one level of care provided by a single entity on the same premises.
- 2.54** “**Statement of Deficiencies (hereinafter SOD)**” means a document issued by the Department which describes deficiencies in complying with these regulations.
- 2.55** “**Submit**” means to deposit in the US mail, hand deliver, fax submission and electronic submission to the Department
- 2.56** “**Tenancy Obligation**” means a house rule that does not conflict with these regulations, established by the facility and included in the admission agreement, that all residents must adhere to in order to continue their residence.
- 2.57** “**Unlicensed Health Care Assistive Personnel**” means individuals who provide resident care services and who are not licensed as medical or health professionals.
- 2.58** “**Working Days**” means weekdays. Legal holidays (when state offices are closed), Saturdays and Sundays are not working days.

3 LICENSING

- 3.1 Responsibility for compliance.** The applicant/licensee shall comply with these regulations.
- 3.2 Unlicensed facilities.** No person shall operate an assisted living program or a residential care facility without a license, unless otherwise authorized by law.
- 3.3 Person license issued to.** The license is only valid for the named licensee(s).

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3.4 Application and licensure.

3.4.1 Application required. The applicant is required to submit a written application for a license on a form approved by the Department. A license must be issued prior to the commencement of operation, or the applicant may be subject to sanctions. Incomplete applications on which no action has been taken by the applicant after sixty (60) calendar days shall be void. A non-refundable licensing fee shall be submitted with the application. The check shall be made payable to the Treasurer, State of Maine. Fees are:

3.4.1.1 Residential Care Facilities - \$10.00 each licensed bed; and

3.4.2 Admission and scope of services policy. Facilities are required to provide the Department with a written admission policy at the time of application for a license. The policy shall describe who may be admitted and scope of services provided, including scope of Nursing Services, consistent with applicable state and federal law.

3.4.3 Additional licensing requirements. Prior to the issuance of a license and prior to re-licensure, the facility shall:

3.4.3.1 Be certified to be in compliance with the National Fire Protection Association (NFPA) Life Safety Code and other fire and safety laws and regulations, which are applicable to the facility, as follows:

3.4.3.1.1 A residential care facility with four (4) to sixteen (16) beds must comply with the sections of the Life Safety Code that apply to small facilities and with the new residential board and care occupancy chapter if that facility is a new facility or with the existing residential board and care occupancy chapter if that facility is an existing facility.

3.4.3.2 Comply with all applicable laws and regulations promulgated thereunder, relating to fire safety, plumbing, water supply, sewage disposal and maintenance of sanitary conditions (Class I, II, III);

3.4.3.3 Comply with all other applicable laws and regulations pertaining to licensing; and

3.4.3.4 Provide evidence of a licensed administrator if required by the rules of the Nursing Home Administrators Licensing Board pursuant to Title 32 M.R.S.A. § 62 et. seq.

3.5 Requirement for bond. The applicant shall furnish evidence of a bond covering the applicant and any employee or agent of the applicant who manages, holds or otherwise is entrusted with resident funds in an amount sufficient to replace those funds in the event of loss.

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- 3.6 Limitations on serving as legal representative.** No licensee, owner, proprietor, administrator, employee or a person with a substantial financial interest in the facility may serve as guardian, conservator or power of attorney of any resident, but may be a representative payee or manager of personal funds.
- 3.7 Issuance of license.** A new applicant will be notified by the Department within two (2) weeks of filing an application whether the application is complete. The Department and the Department of Public Safety are required to provide a new applicant necessary services and inspections within ninety (90) days of the filing of the completed application and the date the building is ready for inspection. The license shall specify the name of the owner, the name of the facility, the type of facility, the name of the administrator, the address of the premises where the facility is located, the maximum number of residents, the type of license, and the expiration date of the license.
- 3.8 Default licensing.** If a new applicant has filed a completed application and has a building ready for inspection, has not been provided the necessary notifications, inspections or services from the Department and the Department of Public Safety, and a period of more than ninety (90) days has elapsed since notification that the application is complete, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The Department shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. If initial services and inspections are completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.
- 3.9 Number of licenses required.** When more than one type of facility or program is provided, the Department may consider the following criteria in determining the number of licenses required:
- 3.9.1** The physical location;
 - 3.9.2** The structure or management and ownership;
 - 3.9.3** If providing more than one licensed level of care, the physically distinct part of the building designated for the assisted living program or residential care facility; and
 - 3.9.4** The administrative and regulatory burdens and benefits of granting a given number of licenses.
- The Department will specify the number of licensed beds or apartments, as appropriate, for each level of care. The provider shall not exceed licensed capacity.
- 3.10 Adult day services programs .** When an adult day services program is physically located in an assisted living program or residential care facility, separate licenses shall not be required. The adult day services programs shall comply with the *Regulations Governing the Licensing and Functioning of Adult Day Services Programs* and licensed capacity will be reflected on the assisted living program or residential care facility's the license.

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- 3.11 Multilevel facility license.** For multilevel facilities, a single license will be issued by the Department, identifying each level of service. Multilevel facilities are assisted housing programs that are located on the same contiguous grounds with licensed nursing facilities, adult day services programs or home health agencies. Multilevel facilities, when subject to licensing action or other sanctions, may have one or more of its levels sanctioned, and the Department will specify the particular levels in writing.
- 3.12 Provisional license.** The Department shall issue a provisional license, for a minimum period of three (3) months or longer as deemed necessary by the Department but not to exceed twelve (12) consecutive months, to an applicant who:
- 3.12.1** Has not previously operated the facility/program for which the application is made or is licensed and has not operated the facility during the term of that license;
 - 3.12.2** Complies with all applicable laws and regulations, except those which can only be complied with once residents are served by the applicant; and
 - 3.12.3** Demonstrates the ability to comply with all applicable laws and regulations by the end of the Provisional license term; or
 - 3.12.4** Meets the criteria for default licensing.
- 3.13 Conditional license.** The Department may issue a conditional license when the licensee fails to comply with applicable laws and regulations and, in the judgment of the Commissioner of the Department of Human Services, the best interest of the public would be so served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license. A conditional license may be issued for up to a twelve (12) month period.
- 3.14 Transfer of licenses.** No license may be transferred and is not applicable to any location or persons other than those specified on the license. When an assisted living program or residential care facility is sold or otherwise transferred to another provider, the new provider must apply for and obtain a license and pay a licensing fee prior to operating the program.
- 3.15 Term of license.** A license may be valid for two (2) years, as long as the Department has determined the facility is in substantial compliance with licensing rules and has no history of health or safety violations. Prior to the expiration of the license, the Department shall inspect for continued compliance with applicable laws and regulations as often as deemed necessary by the Department. In facilities/programs licensed for more than one level of care, the term of the license will be the term permitted for the highest level of care. For purposes of this section, the following terms have the following meanings:
- 3.15.1** “Substantial compliance” means there were no Class I or II violations that would threaten the health or safety of residents.

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- 3.15.2** “No history of health or safety violations” means that within the preceding two (2) years, the applicant was in substantial compliance with the rules.
- 3.16 Reapplications.** Whenever a licensee has made timely and sufficient application for renewal of a license, the existing license shall not expire until the application has been finally determined by the Department.
- 3.17 Posting the license.** The licensee shall post the license where it can be seen and reviewed by the public.
- 3.18 Right of entry.** The Department’s authorized representatives, authorized representatives of the Maine Attorney General’s Office and authorized representatives of the Long Term Care Ombudsman Program shall have the right to enter upon and into any licensed facility/program at any time, in order to determine the state of compliance with applicable laws and regulations contained herein. To inspect any facility which the Department knows or believes is operated without a license, the department may enter only with the permission of the owner or person in charge or with a search warrant from the District Court authorizing entry and inspection. Any application for an Assisted Living Program or Residential Care Facility license shall constitute permission for entry and inspection to verify compliance with applicable law and rules.
- 3.19 Filing Plans of Correction.** Whenever the Department issues an SOD, the applicant/licensee shall submit a specific POC within ten (10) working days of the date the applicant/licensee received the SOD.
- 3.20 Reapplication subsequent to licensing actions.** Subsequent to any of the following actions, a full annual or biennial license will not be issued until the deficiencies identified by the Department have been corrected:
- 3.20.1** Issuance of a conditional license;
- 3.20.2** Refusal to issue or renew a license;
- 3.20.3** Revocation or suspension of a license; or
- 3.20.4** Refusal to issue a provisional license.
- 3.21 Renewal.** A renewal application must be received by the Department thirty (30) days prior to the license expiration date. Regardless of the term of the license, the licensee must pay a license fee annually. Prior to acting on the application for renewal the Department may:
- 3.21.1** Verify any information in the renewal application and conduct an inspection of the facility/program;
- 3.21.2** Issue an SOD, as appropriate. If cited deficiencies are not corrected within the established time frame, the Department may deny the renewal application, impose a fine, issue a Directed POC, and/or impose a conditional license.

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- 3.22 Actions requiring prior written approval.** When a proposed alteration of the physical plant involves areas used by residents, residents may not occupy these areas until the Department has determined that the changes comply with these regulations and issues a written approval to proceed.
- 3.23 Waivers.** The Department may waive or modify any provision(s) of these regulations as long as the provision is not mandated by state or federal law and does not violate resident rights described in Section 5 of these regulations. The applicant/licensee shall indicate, in writing, what alternative method will comply with the intent of the regulation for which the waiver is sought. If approved, the waiver may be time limited.
- 3.24 Informal review of waiver denial.** The applicant/licensee may appeal a decision of the Department to deny a waiver request by submitting a written request for an informal review by the Department, or its designee, within ten (10) working days of the date of receipt of the denial. The applicant/licensee shall state in the written request, the grounds for the appeal. Should the applicant/licensee disagree with the informal review decision, an administrative hearing (pursuant to the Maine Administrative Procedure Act) may be requested within ten (10) working days of notice or receipt of the date of the informal review decision by writing to the Department. See also Section 4.10 of these regulations.
- 3.25 Rates and contracts.**
- 3.25.1 Rates.** Assisted housing programs shall list all standard charges and make them available to the public.
- 3.25.2 Signing a contract.** Each provider and each resident, or someone authorized to act in the resident's behalf, shall sign a contract upon admission or within sixty (60) calendar days of the effective date of these regulations. The resident and/or resident's legal representative shall be given an original of the signed contract and the provider shall keep a duplicate in the resident's file. No one other than the resident shall incur any responsibility for the resident's obligations by signing the contract for admission of the resident. Financial responsibility for the resident's expenses can only be assumed according to Section 3.25.3.7.
- 3.25.3 Provisions of contract.** The contract shall contain standard provisions regarding services and accommodations to be provided and the rates and charges for such and any other related charges not covered by the facility/program's basic rate. Each contract is subject to the following requirements:
- 3.25.3.1** No contract may contain a provision for the discharge of a resident, which is inconsistent with state law or rule.
- 3.25.3.2** No contract may contain a provision that may require or imply a lesser standard of care or responsibility than is required by law or rule.

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- 3.25.3.3** Each contract shall provide for at least thirty (30) calendar day's notice prior to any changes in rates, responsibilities, services to be provided or any other items included in the contract.
- 3.25.3.4** No contract or agreement will require a deposit or other prepayment, except one month's rent in an assisted living program, which may be used as a security deposit. The contract must state the explicit return policy of the facility with regard to the security deposit.
- 3.25.3.5** No contract may contain a provision, which provides for the payment of attorney fees or any other cost of collecting payments from the resident.
- 3.25.3.6** The following shall be appended to the contract and made a part thereof:
- 3.25.3.6.1** Grievance procedure;
 - 3.25.3.6.2** Tenancy obligations;
 - 3.25.3.6.3** Resident rights; and
 - 3.25.3.6.4** Copy of the admissions policy.
- 3.25.3.7** The contract signed for admission of the resident may not require or encourage anyone other than the resident to obligate himself/herself for the payment of the resident's expenses. If anyone other than the resident informs the facility that he/she wishes to guarantee payment of the resident's expenses, he/she can do so only in a separate written agreement. No provision in the separate written agreement can conflict with these rules. This separate written agreement must be provided to the guarantor of payment and must plainly state the following:
- 3.25.3.7.1** Do not sign this agreement unless you voluntarily agree to be financially liable for paying the resident's expenses with your own money.
 - 3.25.3.7.2** You may change your mind within forty-eight (48) hours of signing this agreement by notifying the facility that you wish to revoke this agreement.
 - 3.25.3.7.3** You may call the Long Term Care Ombudsman Program for an explanation of your rights.

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- 3.26 Information to residents.** The licensee must provide an information packet that includes the following information to the resident and/or resident's legal representative at the time of admission or within sixty (60) calendar days of the effective date of these regulations for all current residents who have not already been given this information:
- 3.26.1** Advance Directives information;
 - 3.26.2** Information regarding the type of facility and the licensing status;
 - 3.26.3** The Maine Long Term Care Ombudsman Program brochure;
 - 3.26.4** Toll free telephone numbers for the Office of Advocacy of the Department of Behavioral and Developmental Services (BDS) if the facility has residents who receive services from BDS, Adult Protective Services, Assisted Living Licensing Services and Division of Licensing and Certification; and
 - 3.26.5** The process and criteria for placement in, or transfer or discharge from, the program; and
 - 3.26.6** The program's staff qualifications.
- 3.27 Information for residents of Alzheimer's/dementia units.** When a provider operates a unit meeting the requirements of a Designated, or **any other authorized representative** Alzheimer's/Dementia Care Unit as all or part of its program, residents and family members must be provided the following information:
- 3.27.1** A written statement of philosophy;
 - 3.27.2** The process used for resident assessment and establishment of a residential services plan and its implementation;
 - 3.27.3** Those physical environment and design features that support the functioning of adults with cognitive impairments;
 - 3.27.4** The frequency and types of group and individual activities provided by the program;
 - 3.27.5** A description of family involvement and the availability of family support programs;
 - 3.27.6** A description of security measures provided by the facility;
 - 3.27.7** A description of in-service training provided for staff; and
 - 3.27.8** Policies with criteria and procedures for admission and discharge of residents to and from the facility/unit.

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- 3.28 Refunds.** Refunds are to be managed as follows:
- 3.28.1** If a resident dies or is discharged, the provider shall issue a refund to the resident, the resident's legal representative or the resident's estate for any advance payments on a pro-rated basis.
 - 3.28.2** Refunds shall be made within thirty (30) calendar days of date of discharge/death.
 - 3.28.3** If a resident is determined to be retroactively eligible for third party payment, upon payment from a third party payer, the provider must repay the family or other payer any payments made for the period covered by third party payment.
- 3.29 Use of personal funds by operator.** Under no circumstances shall any operator or agent of an assisted housing program use the personal funds of any resident for the operating costs of the facility or for items, which are part of the contractual payment. The personal funds of any resident shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner's family or any employee of the facility. No operator or agent of the facility shall borrow money from any resident. *(Class IV)*
- 3.30 Tenancy obligation.** Tenancy obligations, if they exist in the facility, must not conflict with these regulations and are subject to Section 5.26 of these regulations.
- 3.31 Administrative and resident records.**
- 3.31.1 Confidentiality.** All administrative and resident records shall be stored in such a manner that unauthorized persons cannot gain access to them.
 - 3.31.2 Location of records.** All resident records, resident finances, admission/discharge records and census logs shall be readily accessible to the Department even in the event of a change of ownership or administration, unless this is done pursuant to a court order or to Section 5.12 of these regulations. Other administrative records, including personnel records, shall be made available with reasonable notice by the Department. All records shall be maintained in a format that is readily accessible and available to all appropriate staff.
 - 3.31.3 Inspection of records.** All reports and records shall be made available for inspection upon request by the Department, the Long Term Care Ombudsman Program or the Maine Attorney General's Office without the consent of the resident or his/her legal representative.
 - 3.31.4 Record retention.** All administrative and resident records shall be maintained in an accessible format for at least seven (7) years after the date of death or last discharge of the resident.
 - 3.31.5 Storage of records.** Provisions shall be made for the safe storage of all records required by these regulations.

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3.31.6 Disaster plan. Each facility/program shall develop a comprehensive disaster plan. This plan shall include the following:

3.31.6.1 Contingencies for loss of power, heat, lights, water and/or sewage disposal;

3.31.6.2 Contingencies for short term and long term emergencies; and

3.31.6.3 If a facility has no back up power source that can be used to continue operation of heat, lights, water and sewage disposal, the plan shall include contingencies for evacuation that include contractual arrangements with other agencies or facilities for temporary living accommodations.

4 ENFORCEMENT PROCEDURES

4.1 Inspections required. The provider shall submit to regular and unannounced inspection surveys and complaint investigations in order to receive and/or maintain a license. The provider shall give access to all records required by these regulations. The Department has the right to interview residents and employees in private. *[Class I]*

4.2 Frequency and type of inspections. An inspection may occur:

4.2.1 Prior to the issuance of a license;

4.2.2 Prior to renewal of a license;

4.2.3 Upon complaint that there has been an alleged violation of licensing regulations;

4.2.4 When there has been a change or proposed change in administrator, physical plant or services;

4.2.5 When necessary to determine compliance with a Directed Plan of Correction, conditions placed on a license or that cited deficiencies have been corrected;

4.2.6 For routine monitoring of resident care; or

4.2.7 Any time the Department has probable cause to believe that an assisted housing program has violated a provision of these regulations or is operating without a license.

4.3 Licensing records kept by the Department. The Department will maintain a complete record of all licensing activities related to the assisted housing program. Those sections of the files not made confidential by law are available for public inspection at any time during normal business hours.

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- 4.4 Complaints.** The Department will accept complaints from any person about alleged violation(s) of licensing regulations. The provider shall not retaliate against any resident or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted as a result of a complaint investigation will be provided to the assisted housing program in writing.
- 4.5 Enforcement process.**
- 4.5.1** After inspection, an SOD will be sent to the licensee if the inspection identifies any failure to comply with licensing regulations. An SOD may be accompanied by a Directed POC.
- 4.5.2** The licensee shall complete a POC for each deficiency, sign the plan and submit it to the Department within ten (10) working days of receipt of any SOD.
- 4.5.3** Failure to correct any deficiency(ies) or to file an acceptable POC with the Department may lead to the imposition of sanctions or penalties as described in Sections 4.7 and 4.8 of these regulations.
- 4.5.4 Informal conference.** If a licensee disagrees with the imposition or amount of any penalty assessed by the Department, the licensee must submit a written notification to the Department stating the nature of the disagreement, within ten (10) working days of receipt of an Assessment of Penalties. Upon receipt of this request, the Director of Assisted Living Licensing Services or his/her designee shall schedule an informal conference for the purpose of trying to resolve the dispute. The Director or his/her designee shall inform the licensee of the results of the informal conference in writing. If a provider desires to appeal the result of an affirmed or modified assessment of penalties following an informal conference, a written request for an administrative hearing, pursuant to Section 4.10, must be made. The Department will stay the collection of any fiscal penalties until final action is taken on an appeal. Penalties shall accrue with interest for each day until final resolution and implementation.
- 4.6 Grounds for intermediate sanctions.** The following circumstances shall be grounds for the imposition of intermediate sanctions:
- 4.6.1** Operation of an assisted living program or residential care facility without a license;
- 4.6.2** Operation of an assisted living program or residential care facility over licensed capacity;
- 4.6.3** Impeding or interfering with the enforcement of laws or regulations governing the licensing of assisted housing programs, or giving false information in connection with the enforcement of such laws and regulations;
- 4.6.4** Failure to submit a POC within ten (10) working days after receipt of an SOD;

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- 4.6.5** Failure to take timely corrective action in accordance with a POC, a Directed POC or Conditional License;
- 4.6.6** Failure to comply with state licensing laws or regulations that have been classified as Class I, II, III or IV pursuant to Sections 4.8.2 & 4.8.3.
- 4.7 Intermediate sanctions.** The Department is authorized to impose one or more of the following intermediate sanctions when any of the circumstances listed in Section 4.6 are present and the Department determines that a sanction is necessary and appropriate to ensure compliance with State licensing regulations to protect the residents of an assisted housing program or the general public:
- 4.7.1** The assisted living program or residential care facility may be directed to stop all new admissions, regardless of payment source, or to admit only those residents the Department approves, until such time as it determines that corrective action has been taken.
- 4.7.2** The Department may issue a Directed POC or Conditional License.
- 4.7.3** The Department may impose a financial penalty.
- 4.8 Financial penalties.**
- 4.8.1** Certain provisions of these regulations have been classified as noted below. Financial penalties may be imposed only when these regulations are violated.
- 4.8.2** Certain provisions of the regulations have a single classification. Such regulations are followed by a notation (i.e., "Class I"). Classifications have been established according to the following standards:
- 4.8.2.1** Class I - Any failure to comply with a regulation where that failure poses an immediate threat of death to a resident(s).
- 4.8.2.2** Class II - Any failure to comply with a regulation where that failure poses a substantial probability of serious mental or physical harm to a resident(s).
- 4.8.2.3** Class III - The occurrence of a repeated deficiency that poses a substantial risk to the health or safety of a resident(s).
- 4.8.2.4** Class IV - The occurrence of a repeated deficiency that infringes upon resident rights.
- 4.8.3** Certain regulations have been given alternative classifications. Such regulations are followed by an alternative notation (i.e., Class I/II or Class II/III). When these regulations are not complied with, the Department will determine which

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classification is appropriate, on a case-by-case basis, by reference to the standards set forth in Section 4.8.2.

- 4.8.4** If the Department assesses financial penalties, an Assessment of Penalties will be issued. The Assessment shall describe the classification of each violation found to have been committed by the facility, the regulation or law that has been violated and the scheduled amount of time corresponding to that violation. If the provider does not contest the imposition or amount of the penalty, the provider must pay within thirty (30) calendar days of receipt of the Assessment of Penalties. If the provider disagrees with the imposition or amount of the penalty, the provider must notify the Department, in writing, stating the nature of the disagreement, within ten (10) working days of receipt of the Assessment of Penalties. The Department will schedule an informal conference to resolve the dispute and a written decision based upon this conference will be provided. If the provider is still dissatisfied with the written decision, an administrative hearing may be requested in accordance with Section 4.10.
- 4.8.5** The amount of any penalty to be imposed shall be calculated according to the following classification system:
- | | | |
|----------------|--|--|
| 4.8.5.1 | Any failure to comply with regulations classified as Class I, pursuant to Section 4.8.2.1; | \$6.00 per resident per occurrence per day |
| | Operation of an assisted living program or residential care facility over licensed capacity, or | |
| | Impeding, interfering or giving false information in connection with the enforcement of laws or regulations governing licensure. | |
| 4.8.5.2 | Any failure to comply with regulations classified as Class II, pursuant to Section 4.8.2.2; | \$5.00 per resident per occurrence per day |
| | Failure to submit a POC within ten (10) working days after receipt of an SOD; or | |
| | Failure to take timely corrective action in accordance with a POC, Directed POC or conditional license. | |
| 4.8.5.3 | The occurrence of a repeated deficiency in complying with regulations classified as Class III, pursuant to Section 4.8.2.3; | \$4.00 per resident per occurrence per day |
| | The occurrence of a repeated deficiency in complying with regulations classified as Class IV, pursuant to Section 4.8.2.4. | |
- 4.8.6** The maximum financial penalty the Department may impose in any instance in which it issues an SOD shall be \$6,000.

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- 4.8.7** The minimum penalty for operation of an assisted living program or residential care facility without a license is \$500 per day.
- 4.8.8** Failure to comply with 22 M.R.S.A. §7888 (6) regarding time drills, as further described in Section 13.3. commits a civil violation for which a forfeiture of not more than \$25 per bed for each occurrence of failure to comply may be adjudged.
- 4.8.9** Any provider unable to immediately pay penalties may within thirty (30) calendar days from receipt of notification of penalty assessment apply to the Department for a delay in payment or installment payments or, in certain circumstances, to have the penalty reduced.
- 4.8.9.1** In order to have the payment delayed or paid in installments, a provider must supply sufficient information to the Department to demonstrate that immediate full payment of the total amount due would result in the interruption of the provision of necessary services to residents.
- 4.8.9.2** In order to have a fine reduced, a provider must supply sufficient information to the Department to demonstrate that payment in full would result in a permanent interruption in the provision of necessary services to residents.
- The Department has the authority to determine whether the provider has supplied sufficient information.
- 4.9 Other sanctions for failure to comply.**
- 4.9.1** When an applicant fails to comply with applicable laws and regulations, the Department may refuse to issue or renew a license to operate an assisted living program or residential care facility.
- 4.9.2** If, at the expiration of a full or Provisional license, or during the term of a full license, the provider fails to comply with applicable laws and regulations, and, in the judgment of the Commissioner, the best interest of the public would be served, the Department may issue a Conditional license, or change a full license to a Conditional license. Failure by the licensee to meet the conditions specified by the Department shall permit the Department to void the Conditional license or refuse to issue a full license. The conditional license shall be void when the Department has delivered in hand or by certified mail a written notice to the licensee, or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term “licensee” means the person, firm, or corporation or association to whom a conditional license or approval has been issued.

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- 4.9.3** Upon investigation, whenever conditions are found which, in the opinion of the Department, immediately endanger the health or safety of the persons living in or attending the assisted living services program or residential care facility, the Department may request that the District Court suspend the license on an emergency basis, pursuant to Title 4 M.R.S.A. § 184, subsection 6.
- 4.9.4** Any license may be suspended or revoked for violation of applicable laws or regulations, committing, permitting, aiding or abetting any illegal practices in the operation of the assisted living program or residential care facility, or conduct or practices detrimental to the welfare of persons living in or attending the facility/program. When the Department believes a license should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedures Act, Title 5 M.R.S.A. Chapter 375 § 10051.
- 4.9.5** Pursuant to Title 22 M.R.S.A. § 7931 et. seq., the Department may petition the Superior Court to appoint a receiver to operate the assisted living program or residential care facility in the following circumstances:
- 4.9.5.1** When the assisted living program or residential care facility intends to close, but has not arranged for the orderly transfer of its residents at least thirty (30) calendar days prior to closure;
- 4.9.5.2** When an emergency exists which threatens the health, security or welfare of residents; or
- 4.9.5.3** When the assisted living program or residential care facility is in substantial or habitual violation of the standards of health, safety or resident care established under State or Federal laws and regulations, to the detriment of the welfare of the residents.
- 4.10** **Appeal rights.** Any assisted living program or residential care facility aggrieved by the Department's decision to take any of the following actions, or to impose any of the following sanctions, may request an administrative hearing to refute the basis of the Department's decision, as provided by the Maine Administrative Procedures Act, Title 5 M.R.S.A. § 9051 et. seq. Administrative hearings will be held in conformity with the Department's Administrative Hearings Regulations. A request for a hearing must be made, in writing, to the Director of Assisted Living Licensing Services, and must specify the reason for the appeal. Any request must be submitted within ten (10) working days from receipt of the Department's decision to:
- 4.10.1** Issue a conditional license;
- 4.10.2** Amend or modify a license;
- 4.10.3** Void a conditional license;
- 4.10.4** Refuse to issue or renew a full license;

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- 4.10.5** Refuse to issue a provisional license;
- 4.10.6** Stop or limit admissions;
- 4.10.7** Issue a directed POC;
- 4.10.8** Affirm or modify an Assessment of Penalties after an informal review;
- 4.10.9** Deny an application to reduce the amount or delay the payment of a penalty; or
- 4.10.10** Deny a request for a waiver of a rule.

5 RESIDENT RIGHTS

- 5.1 Resident rights.** The assisted housing program shall promote and encourage residents to exercise their rights, to age in place and make informed choices. *[Class IV]*
- 5.2 Freedom of choice of provider.** For services and supplies not provided by the licensee , each resident has the right to select the provider of his/her choice. *[Class IV]*
- 5.3 Rights regarding transfer and discharge.** Each resident has the right to continued residence whenever a valid contract for services is in force. The facility must show documented evidence of strategies used to prevent involuntary transfers or discharges. A resident shall not be transferred or discharged involuntarily, except for the following reasons:
 - 5.3.1** When there is documented evidence that a resident has violated the admission contract obligations, despite reasonable attempts at problem resolution; *[Class IV]*
 - 5.3.2** A resident's continued tenancy constitutes a direct threat to the health or safety of others; *[Class IV]*
 - 5.3.3** A resident's intentional behavior has resulted in substantial physical damage to the property of the assisted housing program or others residing in or working there; *[Class IV]*
 - 5.3.4** A resident has not paid for his/her residential services in accordance with the contract between the assisted housing program and the resident; *[Class IV]*
 - 5.3.5** When there is documented evidence that the facility cannot meet the needs of the resident as the program is fundamentally designed; *[Class IV]* or
 - 5.3.6** The license has been revoked, not renewed, or voluntarily surrendered. *[Class IV]*
- 5.4 Transfer or discharge.** When a resident is transferred or discharged in a non-emergency situation, the resident or his/her guardian shall be provided with at least fifteen (15) days

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advance written notice to ensure adequate time to find an alternative placement that is safe and appropriate. The provider has an affirmative responsibility to assist in the transfer or discharge process and to produce a safe and orderly discharge plan. If no discharge plan is possible, then no involuntary non-emergency discharge shall occur until a safe discharge plan is in place. Appropriate information, including copies of pertinent records, shall be transferred with a resident to a new placement. *[Class IV]* Each notice must be written and include the following:

- 5.4.1** The reason for the transfer or discharge, including events which are the basis for such action; *[Class IV]*
- 5.4.2** The effective date of the transfer or discharge; *[Class IV]*
- 5.4.3** Notice of the resident's right to appeal the transfer or discharge as set forth in Section 5.28; *[Class IV]*
- 5.4.4** The mailing address and toll-free telephone number of the Long Term Care Ombudsman Program; *[Class IV]*
- 5.4.5** In the case of residents with developmental disabilities or mental illness, the mailing address and telephone number of the Office of Advocacy, Department of Behavioral and Developmental Services; *[Class IV]*
- 5.4.6** The resident's right to be represented by himself/herself or by legal counsel, a relative, friend or other spokesperson. *[Class IV]*
- 5.5** **Emergency transfer or discharge.** When an emergency situation exists, no written notice is required, but such notice as is practical under the circumstance shall be given to the resident and/or resident's representative. The facility shall assist the resident and authorized representatives in locating an appropriate placement. Transfer to an acute hospital is not considered a placement and the obligation in regard to such assistance does not necessarily terminate. *[Class IV]*
- 5.6** **Leaves of absence.** When a resident is away, and continues to pay for services in accordance with the contract, the resident shall be permitted to return unless any of the reasons set forth in Section 5.4 are present and the resident or resident's legal representative has been given notice as may be required in these regulations. *[Class IV]*
- 5.7** **Assistance in finding alternative placement.** Residents who choose to relocate shall be offered assistance in doing so.
 - 5.7.1** Residents of residential care facilities shall not be required to give advance notice. *[Class IV]*
- 5.8** **Right to communicate grievances and recommend changes.** The facility/program shall assist and encourage residents to exercise their rights as residents and citizens. Residents may freely communicate grievances and recommend changes in policies and services to the assisted

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- housing program and to outside representatives of their choice, without restraint, interference, coercion, discrimination or reprisal. All grievances shall be documented. Assisted housing programs shall establish and implement a procedure for the timely review and disposition of grievances. The procedure shall include a written response to the grievant describing disposition of the complaint. These documents shall be maintained and available for review upon request by the Department. *[Class IV]*
- 5.9 Right to manage financial affairs.** Residents shall manage their own financial affairs, unless there is a representative payee, other legal representative appointed or other person designated by the resident. *[Class IV]*
- 5.10 Right to freedom from abuse, neglect or exploitation.** Residents shall be free from mental, verbal, physical and/or sexual abuse, neglect and exploitation. *[Class I, II, III, IV]*
- 5.11 Rights regarding restraints and aversive conditioning.** There shall be no use of physical, chemical, psychological or mechanical restraints or aversive conditioning, except in accordance with this section. *[Class I, II, III, IV]*
- 5.11.1** Full-length bedrails on both sides of the bed are considered restraints and shall not be attached to the bed. Half-length bedrails attached to the top half of the bed are permissible. One full-length bed rail and one half-length bed rail may be used if the full-length rail is on the side against the wall. *[Class I, II, III, IV]*
- 5.11.2** In the case of a person with mental retardation, the provider must comply with the requirements of the *Regulations Governing the Use of Behavioral Procedures in Maine Programs Serving Persons with Mental Retardation* and the *Regulations Governing the Use of Restraints in Community Settings*. These regulations are promulgated and enforced by the Department of Behavioral and Developmental Services. *[Class I, II, III, IV]*
- 5.11.3** For any resident who is a client of the Department of Behavioral and Development Services due to his/her mental illness, the facility/program shall comply with the *Rights of Recipients of Mental Health Services*, promulgated and enforced by the Department of Behavioral and Development Services. *[Class I, II, III, IV]*
- 5.12 Right to confidentiality.** Residents' records and information pertaining to their personal, medical and mental health status is confidential. Residents and their legal representatives shall have access to all records pertaining to the resident at reasonable times, in the presence of the provider or his/her representative, within one (1) business day of the request. Residents and their legal representatives are entitled to have copies made of their record within one (1) business day of the request. The licensee and employees shall have access to confidential information about each resident only to the extent needed to carry out the requirements of the licensing regulations or as authorized by any other applicable state or federal law. The written consent of the resident or his/her legal representative shall be required for release of information to any other persons except authorized representatives of the Department or the Long Term Care Ombudsman Program. The Department shall have access to these records for

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- determining compliance with these regulations. Records shall not be removed from facility, except as may be necessary to carry out these regulations. Upon admission, each resident shall sign and date a written consent which lists individuals, groups, or categories of individuals with whom the program may share information (e.g., sons, daughters, family members or duly authorized licensed practitioners, etc.). A written consent to release of information shall be renewed and time dated every thirty (30) months, pursuant to 22 M.R.S.A. §1711-C (4). Consent may be withdrawn at any time. *[Class IV]*
- 5.13 Right to refuse to perform services for the facility.** Residents may refuse to perform services for the facility. *[Class IV]*
- 5.14 Right to privacy and consideration.** Residents shall be treated with respect. Residents shall also be treated with respect and consideration with regard to their individual need for privacy when receiving personal care or treatment, preferred mode of language and communication. *[Class IV]*
- 5.15 Right to communicate privately with persons of choice.** Residents may associate and communicate privately with persons of their choice at any time, unless to do so would infringe on the rights of others. They may receive personal mail, unopened, and shall be assisted when necessary with writing and mailing letters and making phone calls. Residents shall have privacy when having telephone conversations. *[Class IV]*
- 5.16 Right to participate in activities of choice.** Residents may participate in social, political, religious and community activities, unless to do so would infringe on the rights of others. *[Class IV]*
- 5.17 Right to personal clothing and possessions.** Residents may retain and use their personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or impair the provider's ability to meet the purpose of these rules. *[Class IV]*
- 5.18 Couples.** A couple residing in an assisted housing program has the right to share a room. *[Class IV]*
- 5.19 Right to be informed of services provided by the facility/program.** Residents shall be fully informed of items or services, which are included in the rate they pay. This rate shall include the cost of repair or replacement of items damaged by normal wear and tear. *[Class IV]*
- 5.20 Right to refuse treatment or services.** Residents may choose to refuse medications, treatments or services. If the resident refuses necessary care or treatment, the provider shall make reasonable efforts to consult the resident's duly authorized licensed practitioner, caseworker or other appropriate individuals in order to encourage residents to receive necessary services. No person without legal authority to do so shall order treatment, which has not been consented to by a competent resident. *[Class IV]*
- 5.21 Right to be free from discrimination.** A resident shall be provided services without regard to race, age, national origin, religion, disability, gender or sexual orientation. *[Class IV]*

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5.22 Right to information regarding deficiencies. Residents have the right to be fully informed of findings of the most recent survey conducted by the Department. The provider shall inform residents or their legal representatives that the survey results are public information and are available in a common area of the facility. Residents and their legal representatives shall be notified by the provider, in writing, of any actions proposed or taken against the license of the facility/program by the Department, including but not limited to decisions to issue Directed Plan of Correction, decisions to issue a Conditional license, refusal to renew a license, appointment of a receiver or decisions to impose fines or other sanctions. This notification shall take place within fifteen (15) working days from receipt of notice of action. *[Class IV]*

5.23 Notification of rights. The provider shall inform each resident and legal representative prior to or at admission or within thirty (30) calendar days of any changes to Section 5 of these rights and shall provide them with a copy thereof. The provider must accommodate for any communication barriers that may exist, to ensure that each resident is fully informed of his/her rights. *[Class IV]*

5.24 Bill of rights for persons with mental retardation. Facilities/programs serving persons with mental retardation shall post and comply with the *Bill of Rights for Persons with Mental Retardation*, Title 34-B M.R.S.A. § 5601 et. seq. *[Class IV]*

5.25 Mandatory report of rights violations. Any person or professional who provides health care, social services or mental health services or who administers a long term care facility or program who believes that the regulations pertaining to residents' rights or the conduct of resident care have been violated, shall report the alleged violation to the Department of Human Services ((800) 383-2441) and to one or more of the following:

Disability Rights Center (DRC), pursuant to Title 5 M.R.S.A. § 19501 through § 19508 for incidents involving persons with mental illness; the Long Term Care Ombudsman Program, pursuant to Title 22 M.R.S.A. § 5107-A for incidents involving elderly persons; the Office of Advocacy, pursuant to Title 34-B M.R.S.A. § 1205 for incidents involving persons with mental retardation; or Adult Protective Services, pursuant to Title 22 M.R.S.A. § 3470 through § 3487.

Reporting suspected abuse, neglect and exploitation is mandatory in all cases. Documentation shall be maintained in the facility that a report has been made.

Mandated reporters shall contact the Department of Human Services ((800) 383-2441) within one (1) working day of receiving and/or obtaining information about any rights violations. *[Class IV]*

5.26 Reasonable modifications and accommodations. To afford individuals with disabilities the opportunity to reside in assisted living programs, the licensee shall:

5.26.1 Permit directly, or through agreement with the property owner, if the property owner is a separate entity, reasonable modification of the existing premises, at the expense of the disabled individual or other willing payer. Where it is reasonable to

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do so, the provider may require the disabled individual to return the premises to the condition that existed before the modification, upon discharge of that individual. The provider is not required to make the modification at his/her own expense, if it imposes a financial burden. *[Class IV]*

- 5.26.2** Make reasonable accommodation in regulations, policies, practices or services, including permitting reasonable supplementary services to be brought into the facility/program. The provider is not required to make the accommodation, if it imposes an undue financial burden or results in a fundamental change in the program. *[Class IV]*
- 5.27** **Right of action.** In addition to any remedies contained herein, any resident whose rights have been violated may commence a civil action in Superior Court for injunctive and declaratory relief pursuant to Title 22 M.R.S.A. § 7948 et. seq. *[Class IV]*
- 5.28** **Right to appeal an involuntary transfer or discharge.** The resident has the right to an expedited administrative hearing to appeal an involuntary transfer or discharge. A resident may not appeal a discharge due to the impending closure of the program unless he/she believes the transfer or discharge is not safe or appropriate. To file an appeal regarding an involuntary transfer or discharge, the resident must submit the appeal within five (5) calendar days of receipt of a written notice. If the resident has already been discharged on an emergency basis, the provider shall hold a space available for the resident pending receipt of an administrative decision. Requests for appeals shall be submitted to Assisted Living Licensing Services for submission to the Office of Administrative Hearings, 11 State House Station, Augusta, Maine 04333-0011. The provider is responsible for defending its decision to transfer or discharge the resident at the administrative hearing. *[Class IV]*
- 5.29** **Resident adjudicated incompetent.** In the case of a resident adjudicated incompetent, the rights of the resident are exercised by the resident's legal representative, as defined in Section 2.28 of these Regulations. *[Class IV]*
- 5.30** **Resident councils**
- 5.30.1** Residents of assisted living programs and residential care facilities have the right to establish a resident council, pursuant to Title 22 M.R.S.A. § 7923. Residents and their families shall be notified of this right, orally and in writing, within the first month after admission, in a manner understood by each resident and by a notice of the right to form a council being posted prominently in a public area.
- 5.30.2** If a majority of the residents choose not to establish a council, they shall be given the opportunity to choose otherwise at least once each year thereafter.
- 5.30.3** The council has the following rights:

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- 5.30.3.1** To be provided with a copy of the facility's policies and procedures relating to resident rights and to make recommendations to the administrator on how they may be improved; *[Class IV]*
 - 5.30.3.2** To establish procedures that will ensure that all residents are informed about and understand their rights; *[Class IV]*
 - 5.30.3.3** To elicit and disseminate information regarding programming in the facility and to make recommendations for improvement; *[Class IV]*
 - 5.30.3.4** To help identify residents' problems and recommend ways to ensure early resolution; *[Class IV]*
 - 5.30.3.5** To inform the administrator of the opinions and concerns of the residents; *[Class IV]*
 - 5.30.3.6** To find ways of involving the families and residents of the facility;
 - 5.30.3.7** To notify the Department and Long Term Care Ombudsman Program when the council is constituted; and *[Class IV]*
 - 5.30.3.8** To disseminate records of council meetings and decisions to the residents and the administrator and to make these records available to family members or their designated representatives and the Department, upon request. *[Class IV]*
- 5.31 Right to a service plan.** The provider shall assist residents to implement any reasonable plan of service developed with community or state agencies. *[Class IV]*

6 ALZHEIMERS'/DEMENTIA UNIT STANDARDS

- 6.1 Alzheimers'/Dementia Care Units.** A facility or unit may be designated as an Alzheimers'/Dementia Care Unit if the following regulations are met and the facility has received written designation from the Department.
- 6.2 Admission requirements.**
- 6.2.1** At the time of admission to an Alzheimer's/Dementia unit, the resident's individual record must contain:
 - 6.2.1.1** Documentation of the legal representative's authority for placement, including but not limited to, the order, instrument or other documentation upon which the legal representative or facility relies upon for authority, the name, address and telephone number of the individual(s) consenting to placement, and all other documentation required by State and Federal law for valid authority.

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- 6.2.1.2** Documentation of a physician's diagnosis of Alzheimer's disease or dementia within 30 days of admission to the unit.

6.3 Design standards. The unit shall be designed to accommodate residents with dementia, enhance their quality of life, and promote their safety.

6.3.1 Physical design. In addition to the physical plant standards required for the licensure, an Alzheimer's/dementia care unit shall have:

- 6.3.1.1** Adequate space for dining, group and individual activities and family visits;
- 6.3.1.2** For facilities licensed after May 29, 1998, secured outdoor space and walkways, which allow residents to ambulate, but prevent undetected egress;
- 6.3.1.3** High visual contrasts between floors and walls and doorways and walls in resident use areas. Other doors used as fire exits and access ways may be designed to minimize contrast to obscure or conceal areas the residents should not enter;
- 6.3.1.4** Non-reflective floors, walls and ceilings;
- 6.3.1.5** Adequate and even lighting which minimizes glare and shadows; and
- 6.3.1.6** A staff work area for charting and storage of resident records, and a communication system such as a telephone or two-way voice actuated call system.

6.3.2 Physical environment. The designated Alzheimer's/dementia care unit shall:

- 6.3.2.1** Provide freedom of movement for the residents between common areas and his/her room;
- 6.3.2.2** Provide assistive equipment that maximizes the independence of individual residents;
- 6.3.2.3** Label or inventory all resident's possessions;
- 6.3.2.4** Provide comfortable, non-institutional seating in the common use areas;
- 6.3.2.5** Encourage residents to decorate and furnish their rooms with personal items and furnishings, as appropriate;
- 6.3.2.6** Individually identify resident's rooms as appropriate; and

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6.3.2.7 Only use a public address system in the unit (if one exists) for emergencies.

6.3.3 Physical Safety.

6.3.3.1 The designated Alzheimer's/dementia care unit shall have policies and procedures regarding residents who may wander. The procedures shall include actions to be taken in case a resident elopes.

6.3.3.2 If locking devices are used on doors that exit the unit, as approved by the building codes agency and the Office of the State Fire Marshal having jurisdiction over the facility, then the locking device shall be electronic and will automatically release when the following occurs:

6.3.3.2.1 Upon activation of the fire alarm or sprinkler system;

6.3.3.2.2 Power failure; or

6.3.3.2.3 Bypassing a key button/key pad located at exits for routine use by staff for service.

6.3.3.3 If the unit uses keypads to lock and unlock doors exiting from the unit, then directions for access to the unit shall be posted on the outside of the door.

6.3.3.4 The units shall not have entrance and exit doors that are closed with non-electric keyed locks, nor shall a door with a keyed lock be placed between a resident and the exit.

6.4 Therapeutic activities for Alzheimer's/Dementia Care Units. All facilities with Alzheimer's/Dementia Care Units shall offer the following types of individual or group activities at least weekly:

6.4.1 Gross motor activities (e.g., exercise, dancing, gardening, cooking, etc.);

6.4.2 Self-care activities (e.g., dressing, personal hygiene/grooming, etc.);

6.4.3 Social activities (e.g., games, music, reminiscing, etc.);

6.4.4 Crafts (e.g., decorations, pictures, etc.);

6.4.5 Sensory enhancement activities (e.g., auditory, visual, olfactory and tactile stimulations, etc.);

6.4.6 Outdoor activities (e.g., walking outdoors, field trips, etc.); and

6.4.7 Spiritual activities.

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6.5 Pre-service training for Alzheimer's/Dementia Care Units. For pre-service training, all facilities with Alzheimer's/Dementia Care Units must provide a minimum of eight (8) hours classroom orientation and eight (8) hours of clinical orientation to all new employees assigned to the unit. The trainer(s) shall be qualified with experience and knowledge in the care of individuals with Alzheimer's disease and other dementias. In addition to the usual facility orientation, which shall cover such topics as resident rights, confidentiality, emergency procedures, infection control, facility philosophy related to Alzheimer's disease/dementia care, and wandering/egress control, the eight (8) hours of classroom orientation shall include the following topics:

6.5.1 A general overview of Alzheimer's Disease and related dementias;

6.5.2 Communication basics;

6.5.3 Creating a therapeutic environment;

6.5.4 Activity focused care;

6.5.5 Dealing with difficult behaviors; and

6.5.6 Family issues.

7 MEDICATIONS AND TREATMENTS

7.1 Use of safe and acceptable procedures. The administrator shall ensure that all persons administering medications and treatments (except residents who self-administer) use safe and acceptable methods and procedures for ordering, receiving, storing, administering, documentation, packaging, discontinuing, returning for credit and/or destroying of medications and biologicals. All employees must practice proper hand washing and aseptic techniques. A hand-washing sink shall be available for staff administering medications. *[Classes I/II/III]*

7.1.1 Residents shall receive only the medications ordered by his/her duly authorized licensed practitioner in the correct dose, at the correct time, and by the correct route of administration consistent with pharmaceutical standards. *[Classes I/II/III]*

7.1.2 No injectable medications may be administered by an unlicensed person, with the exception of bee sting kits and insulin.

7.1.3 Before using a bee sting kit, unlicensed persons must be trained by a registered professional nurse in regard to the safe and proper use of the kit. Documentation of training shall be included in the employee record.

7.1.4 If a resident has Diabetes, unlicensed persons must be trained by a registered professional nurse in regard to the management of persons with diabetics. The registered professional nurse must provide in-service training and documentation to

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include: Documentation of training shall be included in the employee record. *[Class III]*

- 7.1.4.1 Dietary requirements;
- 7.1.4.2 Anti-Diabetic Oral Medications – inclusive of adverse reactions and interventions, hyper and hypo glycemic reactions;
- 7.1.4.3 Insulin mixing including insulin action;
- 7.1.4.4 Insulin storage;
- 7.1.4.5 Injection techniques and site rotation;
- 7.1.4.6 Treatment and prevention of insulin reaction including signs/symptoms;
- 7.1.4.7 Foot care;
- 7.1.4.8 Lab testing, urine testing and blood glucose monitoring; and
- 7.1.4.9 Standard Precautions.

7.1.5 Urine testing shall not be done around medication or areas where food is stored or prepared. Proper Standard Precautions relative to body fluids shall be implemented. Toilets shall be used for the disposal of urine and test sample waste. Toxic urine testing chemicals (tablets, solutions) shall be stored in a locked area totally apart from oral medications.

7.1.6 For those residents whom the facility is responsible for assistance with medication administration, no medications, including those brought into the facility by the resident, family or friends, shall be administered or discontinued without a written order signed by a duly authorized licensed practitioner or other person licensed to prescribe medications. *[Class III]*

7.1.7 Orders for medications and treatments shall be in writing, signed and dated by a duly authorized licensed practitioner and shall be in effect for the time specified by the duly authorized licensed practitioner, but in no case to exceed twelve (12) months, unless there is a written reorder. Orders for psychotropic medications shall be reissued every three (3) months, unless otherwise indicated by the duly authorized licensed practitioner. Standing orders for individual residents are acceptable when signed and dated by the duly authorized licensed practitioner.

7.2 Administration of medications.

7.2.1 Self-administration. Upon admission, each individual's ability to self-administer medications will be determined by an assessment of his/her ability or need for assistance, unless the resident/legal representative elects (in writing) to have the facility administer

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his/her medications. A final decision will be reached between the resident, his/her legal representative, his/her duly authorized licensed practitioner and a facility representative.

7.2.2 Medications administered by facility. For those medications and/or associated treatments for which the facility is responsible, the following apply:

7.2.2.1 Telephone orders shall be accepted only by a registered or licensed nurse or pharmacist. Written dated orders for telephone orders must be signed by the duly authorized licensed practitioner within five (5) working days.
[Class III]

7.2.2.2 Facsimile orders are acceptable legal orders as long as they are in compliance with the Commission on Pharmacy regulations.

7.2.3 Unlicensed assistive personnel. Except for individuals who are already Certified Nurse Aid – Medications (CNA-M's) , unlicensed assistive personnel administering medications and/or treatments must successfully complete training approved by the Department. There shall be evidence available in the facility that such training has been successfully completed. Whenever the standards or guidelines of the medication administration course are substantially revised, unlicensed personnel must be re-certified within one (1) year of the revision, by a method approved by the Department. An additional exception will be made on a case-by-case basis for persons who only administer dietary supplements and/or minor medicated treatments, shampoos, lotions and creams that could be obtained over the counter without a physician's order. Any person who is certified as a CNA-M may administer medications and/or treatments.

A person qualified to administer medications must be on site at the facility whenever a resident(s) have medications prescribed "as needed" (PRN) if this medication is not self-administered.

All unlicensed assistive personnel administering medications and/or treatments must complete a Department-approved eight (8) hour refresher course biennially for re-certification within two (2) years of the original certification. *[Class III]*

By January 1, 2004, all persons who have not taken a state approved course and have not received a Certified Residential Medication Aide certificate, must do so in order to pass medications in Assisted Living Programs.

7.2.4 PRN Medications.

7.2.4.1 PRN Psychotropic medications. Psychotropic medications ordered "as needed" by the duly authorized licensed practitioner, shall not be administered unless the duly authorized licensed practitioner has provided detailed behavior-specific written instructions, including symptoms that might require use of medication, exact dosage, exact time frames between dosages and the maximum dosage to be given in a twenty-four (24) hour period. Facility staff shall notify the duly authorized licensed practitioner

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within twenty-four (24) hours when such a medication has been administered, unless otherwise instructed in writing by the duly authorized licensed practitioner.

7.2.4.2 A person qualified to administer medications must be on site at the assisted living program or residential care facility whenever a resident(s) have medications prescribed “as needed” (PRN) if this medication is not self-administered.

In no event, however, shall antipsychotic-type psychotropic medications be prescribed on a PRN basis only, having no routinely scheduled and administered doses.

7.3 Medication storage.

7.3.1 Residents who self-administer medications and who handle their own medical regime may keep medications in their own room. To ensure the safety of the other residents, the facility will provide a locked area/container, if necessary. *[Class III]*

7.3.2 Medications administered by the assisted living program or residential care facility shall be kept in their original containers in a locked storage cabinet. The cabinet shall be equipped with separate cubicles, plainly labeled, or with other physical separation for the storage of each resident's medications. It shall be locked when not in use and the key carried by the person on duty in charge of medication administration. *[Class III]*

7.3.3 Medications/treatments administered by the assisted living program or residential care facility for external use only shall be kept separate from any medications to be taken internally. *[Class III]*

7.3.4 Medications administered by the assisted living program or residential care facility, which require refrigeration, shall be kept safely stored and separate from food by placement in a special tray or container, except vaccines, which must be stored in a separate refrigeration unit that is not used to store food. Refrigeration shall be between thirty-five (35) degrees and forty (41) degrees Fahrenheit. A thermometer shall be used to ensure proper refrigeration. *[Class III]*

7.4 Temporary absences. When a temporary absence from the facility is expected to be greater than seventy-two (72) hours, medications leaving the facility (except those for resident's who self-administer) must be in a form packaged and labeled by a pharmacist. For medications leaving the facility for seventy-two (72) hours or less, the medication shall be packaged in such a way as to facilitate self-administration or administration by a responsible party of the correct medication at the appropriate time. Properly certified or licensed staff will use acceptable methods and procedures for preparing medications for leaving the facility. Staff will follow the same policies used in the facility for administering medications. The name of the resident and the name and strength of each drug, as well as the directions from the original prescription package, should be conveyed to the resident or their responsible party along with all cautionary information in writing, either directly on an envelope containing the appropriate dose or on a separate instruction sheet. If

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the medication is sent in original container, pills must be counted and documented upon leaving and returning to the facility. *[Class III]*

- 7.5 Medication labeling.** Each prescription dispensed by a pharmacy shall be clearly labeled in compliance with requirements of the Commission on Pharmacy and shall include at least the following:
- 7.5.1** Prescription number;
 - 7.5.2** Resident's full name;
 - 7.5.3** Name, strength and dosage of the drug;
 - 7.5.4** Directions for use;
 - 7.5.5** Name of prescribing duly authorized licensed practitioner;
 - 7.5.6** Name and address of issuing pharmacy;
 - 7.5.7** Date of issue of latest refill;
 - 7.5.8** Expiration date; and
 - 7.5.9** Appropriate accessory and cautionary instructions.
- 7.6 Improperly labeled medications.** For medications administered by the residential care facility, all pharmaceutical containers having soiled, damaged, incomplete, incorrect, illegible or makeshift labels shall be returned to the original dispensing pharmacy for relabeling within two (2) working days or shall be disposed of in accordance with the requirements contained in Section 7.9. *[Class III]*
- 7.7 Expired and discontinued medications.** For all medications administered by the residential care facility, medications shall be removed from use and properly destroyed after the expiration date and when discontinued, according to procedures contained in Section 7.9. They shall be taken out of service, taped shut and locked separately from other medications until reordered or destroyed. *[III]*
- 7.8 Medication owned by residents.** Prescribed medicines are the property of the resident and shall not be given to or taken by other residents or any other person.
- 7.9 Destroying medications.** For medications administered by the residential care facility, all discontinued medications, expired medications or medications prescribed for a deceased resident, except controlled substances and individual doses, shall be destroyed by the administrator or the administrator's designee and witnessed by one (1) competent person who is not a resident. The destruction shall be conducted so that no person can use, administer, sell or give away the medication. Individual unit doses may be returned to the pharmacist and a credit or rebate made to

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- the person(s) who originally paid for the medication. Amounts destroyed or returned shall be recorded on the resident's record, with the signature of the administrator or the administrator's designee and witness(es). Destruction or return to the pharmacy shall take place within sixty (60) calendar days of expiration or discontinuation of a medication or following the death of the resident.
- 7.10 Schedule II controlled substances.** All Schedule II controlled substances administered by the residential care facility listed in the Comprehensive Drug Abuse Act of 1970, Public Law 91-513, Section 202 and as amended pursuant to Section 202 are subject to the following standards. .
[Class II]
- 7.10.1** For all Schedule II controlled substances, there shall be an individual record in which shall be recorded the name of the resident, prescription number, the date, drug name, dosage, frequency and method of administration, the signature of the person administering it and verification of the balance on hand. *[Class II]*
- 7.10.2** There shall be a recorded and signed count of all Schedule II controlled substances at least once a day, if such substances have been used in the facility that day. *[Class II]*
- 7.10.3** All Schedule II controlled substances on hand shall be counted at least weekly and records kept of the inventory in a bound book with numbered pages, from which no pages shall be removed. *[Class II]*
- 7.10.4** All Schedule II controlled substances shall be stored under double lock in a separate locked box or cabinet within the medication cabinet or in an approved double-locked cabinet attached to the wall. *[Class II]*
- 7.10.5** All excess and undesired Schedule II controlled substances in the possession of a licensed facility that are no longer required for a resident, shall be disposed of in the following manner. The Administrator or a licensed or registered nurse shall list all such unused substances, tape the cap or cover of the container securely and keep the same in a securely locked area apart from all other drugs. Disposal shall be in the form of incineration or flushing into the sewage system only in the presence of an authorized representative of the Department, a licensed pharmacist, a member of the Commission on Pharmacy or an authorized representative of the Drug Enforcement Agency. At least one (1) of the persons must be a person who did not dispense the drug or who was the last person to inventory the drug. Documentation of such destruction shall be made on the resident's record and in the inventory record required in Section 7.10.3, signed by the individual authorized to dispose of the drug. *[Class II]*
- 7.11 Bulk supplies.** Facilities may stock in bulk supply those items regularly available without prescription at a pharmacy.
- 7.12 Medication/treatment administration records (MAR) for medications administered by the residential care facility.**

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- 7.12.1** Individual medication/treatment administration records shall be maintained for each resident and shall include all treatments and medications ordered by the duly authorized licensed practitioner. The name of the medication, dosage, route and time to be given shall be recorded in the medication/treatment administration record. Documentation of treatments ordered and time to be done shall be maintained in the same manner. These rules apply only to treatments ordered by licensed health care professionals. *[Class III]*
- 7.12.2** Whenever a medication or treatment is started, given, refused or discontinued, including those ordered to be administered as needed (PRN), the medication or treatment shall be documented on the medication/treatment administration record. It shall be initialed by the administering individual, with the full signature of the individual written on the first page of each month's MAR . A medication or treatment shall not be discontinued without evidence of a stop order signed and dated by the duly authorized licensed practitioner. *[Class III]*
- 7.12.3** Medication errors and reactions shall be recorded in an incident report in the resident's record. Medication errors include errors of omission, as well as errors of commission. Errors in documentation or charting are errors of omission. *[Class II]*
- 7.12.4** Administration of medications ordered as needed (PRN) shall be documented and shall include date, time given, medication and dosage, route, reason given, results or response and initials or signature of administering individual. Treatments ordered PRN shall be documented in the same manner.
- 7.13** **Medication containers.** Graduated medicine containers, for the accurate measurement of liquid medications, shall be used. If not disposable, medicine containers shall be returned to the facility's dishwashing unit for sanitization after each use. Only sterile disposable syringes and needles shall be used for insulin injection. Disposable medicine containers shall not be reused. *[Class III]*
- 7.14** **Breathing apparatus.** When the facility assists a resident with a hand-held bronchodilator, metered dose nebulizers, intermittent positive pressure breathing machine or oxygen machine, there shall be documentation of the following:
- 7.14.1** The names of staff who are qualified or trained to use the equipment and/or to mix medications, the nature of their training, the date and who provided it;
- 7.14.2** The name of the distributing agency and the frequency and specific directions for cleaning the equipment; and
- 7.14.3** The resident's record shall contain a copy of the duly authorized licensed practitioner's order, possible side effects to be monitored, specific instructions as to when the duly authorized licensed practitioner must be notified regarding side effects and instructions to the resident on the use of the breathing apparatus.

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- 7.15** Whenever a Registered Nurse teaches or provides in-service training to unlicensed personnel on medical issues, treatments and/or use of medical equipment not specifically outlined in these regulations, there must be documentation in the employee file.
- 7.16** Whenever employees of a residential care facility are in serviced or taught procedures, the use of equipment or anything else which impacts resident care, there must be documentation in the employee file. This in service training could be taught by other professionals including a Physician, Registered Nurse, Practitioner, Dietician, Physical Therapist, Occupation Therapist, Speech Therapist, product company representative, or other experts in their field.

8 VERIFICATION OF CREDENTIALS

- 8.1 Licensed Staff.** Prior to employing licensed staff, the facility must verify that the person has a valid and current license.
- 8.2 Employing CNA's and CNA-M's.** Prior to employing a CNA or CNA-M (in the capacity of a CNA or CNA-M), the facility must contact the CNA Registry and determine that the CNA or CNA-M is on the Registry and has not been annotated. If the CNA or CNA-M is not on the Registry, or if they have been annotated for abuse, neglect or misappropriation of patient/client/resident funds in a health care setting, the individual cannot be employed to function as a CNA or CNA-M.

9 SCOPE OF LICENSES

- 9.1 Licensing of facilities with three (3) to six (6) residents.** A license is required for more than two residents. A Level III license is required for a residential care facility with 3-6 beds if the provider has three (3) or more employees who are not owners nor related to the owner and if the requirements of these rules are met.
- 9.2 Exemptions for licensed children's homes.** The Department may exempt a licensed children's home from requiring a Level III license once a resident reaches the age of eighteen (18) if the resident has not completed his/her prescribed program of treatment, care or education, or discharge from the facility will occur within nine (9) months of the date the resident turned eighteen (18). If the facility's purpose is to treat or care for children, and the above requirements are met, the Department may grant a written exemption from licensure in order for the adult resident's income to be supplemented.
- 9.3 Dual licensure.** No facility shall be granted a Level III license, and any previously granted Level III license may be subject to revocation, if another license or approval is in effect or granted, unless the Department has determined that dual licensure will not have an adverse impact on the residents.

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- 9.4 Maximum number of adult residents.** The maximum number of beds for which a facility may be licensed will be determined by the Department, according to the regulations set forth herein. Respite care may only be provided in licensed beds.
- 9.5 Physical plant changes.** No alterations in the size or arrangement of the physical plant, location of resident rooms, change in the heating system, water supply system, sewage disposal system, utilities or similar systems shall be made without the prior written approval of the Department in accordance with these regulations.
- 9.6 Residents under the age of 18.** A person who is seventeen (17) years of age may be a resident of a Level III facility without the home being required to be licensed as a children's home, if the Department determines in writing prior to placement that such a placement is in the best interest of that person. The general physical and mental health of all residents of the facility shall be considered in this decision.

10 PROVIDER AND STAFF QUALIFICATIONS AND RESPONSIBILITIES

- 10.1 Provider's age.** The provider shall be at least twenty-one (21) years of age. *[Class III]*
- 10.2 Education, experience and training.** The provider shall submit satisfactory evidence regarding education, experience and training to meet the needs of the residents to be served.
- 10.3 Qualifications of the provider.** The provider must demonstrate to the Department's satisfaction the capacity to operate and manage the facility with regard for the best interests of residents and consistent compliance with these regulations and all relevant laws. In making this determination, the Department may consider:
- 10.3.1** Records of professional licensing boards or registers, any criminal record, child protective record or adult protective record relating to the provider.
- 10.3.2** Understanding of and compliance with resident rights.
- 10.3.3** Any information reasonably related to the ability to provide safe and compassionate services.
- 10.4 Operating cash flow.** Upon initial application, the provider shall give evidence of income or cash flow to meet the expenses of the facility for at least the first two (2) months. This may include such evidence as a line of credit or liquid assets.
- 10.5 Provider responsibilities.** The provider is responsible for the overall operation of the facility and shall:
- 10.5.1** Ensure that staff are qualified, adequately trained and competent and are performing their duties consistent with all regulations and provisions of law;

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- 10.5.2** Make work assignments according to the qualifications of staff and the number and needs of the residents; and
- 10.5.3** Assure that each resident's abilities and needs are adequately assessed and that each resident is offered all necessary services.
- 10.6 Qualifications of other staff.** Other caregivers must meet the following standards:
- 10.6.1** Any person who is given supervisory responsibility over residents must be a capable and dependable person at least eighteen (18) years of age, who is not a resident. Such a person, or the provider, will be available whenever a resident is in the facility. A record of the name, address and telephone number of persons who provide supervision in the absence of the provider shall be kept on file in the facility and shall be made available to the Department upon request. This person will be instructed regarding evacuation procedures for the facility. *[Class I, II, III, IV]*
- 10.6.2** Residential care staff shall attend and show evidence of successful completion of any training that the Department determines to be necessary.
- 10.6.3** No provider shall knowingly employ or otherwise permit any person to serve therein, in any capacity, if such person has a communicable or contagious disease that would threaten the health and welfare of the residents, unless Standard Precautions reduce or eliminate exposure or risk to the residents. *[Class I, II, III, IV]*
- 10.7 Staffing levels.** Staffing shall be sufficient to implement service plans and provide a safe setting. Whenever the Department determines that supervision and services are not adequate to meet resident needs, additional staffing may be required at the discretion of the Department. Additionally, staffing may be permitted to be shared with other levels of assisted housing programs on the same premises as long as there is a clear, documented audit trail and the staffing in the Level III remains adequate to meet the needs of the residents. Staffing to be shared may be based upon the average number of hours used per week or month.
- 10.8 Nursing services.** Nursing services are to be provided by professional nurses pursuant to Title 32 M.R.S.A. §2102, subsection 2. This includes coordination and oversight of assisted living services by unlicensed assistive personnel.
- 10.9 Consultation services.**
- 10.9.1 Pharmacist consultant services.** The Department reserves the right to require pharmacist consultation in the event that serious or multiple deficiencies in medication administration are noted.
- 10.9.2 Registered nurse consultant services.** The Department reserves the right to require licensed nurse consultation in the event that serious or multiple deficiencies in the health care of residents are noted.

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- 10.9.3 Consultant dietitian services.** The Department reserves the right to require a qualified consultant dietitian in the event that serious or multiple deficiencies in food service are noted.

11 HEALTH CARE AND ACCESS TO SERVICES

- 11.1 Medical and health care.** The provider shall coordinate appropriate health care services and assist residents to access them. Each resident shall have access to a duly authorized licensed practitioner of his/her choice. Each resident shall have an annual physical, unless otherwise specified by his/her duly authorized licensed practitioner. *[Class II]*
- 11.2 Requirements for the assessment of individual needs, development and implementation of individual service plans and regular progress notes.**
- 11.2.1 Assessments.** Each resident shall be assessed within thirty (30) calendar days of admission. Reassessments must be completed annually or more frequently if there is a significant change in his/her condition. The assessments/reassessments are to determine each resident's abilities and need for services. Residents shall have an opportunity to receive individualized services that help them function in the facility and in the community and that help restore them to an optimal state of health, or for constructive activity, as needed. The facility will assure, to a practicable extent, that residents' needs will be accommodated regarding individual choices and preferences. This shall be evidenced in the assessment, in the development and implementation of individual service plans and in regular progress notes. The areas identified below are to be assessed. The resident and resident's guardian or other legal representative, as well as staff or other persons approved by the resident or resident's guardian who are knowledgeable about the resident, shall participate in or be consulted concerning the assessment. The listing of these areas is not meant to exclude assessment of any other obvious needs that residents may exhibit.
- 11.2.1.1** Ability and need regarding psychological services, as indicated by the ability to adjust to the facility, ability to make a social and emotional transition to the facility, such as communicating/relating with others, behaving appropriately, acting compatibly with other residents or adapting/controlling personal habits;
- 11.2.1.2** Ability and need to maintain or develop family and community ties;
- 11.2.1.3** Need for educational, religious or community vocational services;
- 11.2.1.4** Ability and need for assistance with legal or financial problems;
- 11.2.1.5** Ability and need for assistance with personal care, or ADLs;
- 11.2.1.6** Ability to manage own personal affairs, use a telephone, handle own finances, read/write correspondence, express likes/dislikes, register to vote;

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- 11.2.1.7** Ability and need regarding social, recreational and leisure time activities, specifying likes and dislikes;
- 11.2.1.8** Abilities and needs regarding hearing, vision, speech, communication, mobility and memory impairments and use of related adaptive equipment;
- 11.2.1.9** Ability and need for assistance with securing necessary health care, including medical, nursing, dental, day treatment, psychological or mental health services, qualified sign language interpreters and other communication assistance;
- 11.2.1.10** Ability and need for arranging transportation to meet medical, social and business needs;
- 11.2.1.11** Ability and need for assistance to be independent in the community;
- 11.2.1.12** Ability and need for assistance regarding administration of medications; and
- 11.2.1.13** Need for discharge planning.
- 11.2.2** **Service plan.** A service plan shall be developed and implemented within thirty (30) calendar days of admission for each resident based upon the findings of the assessment. The plan shall address those areas in which the resident needs encouragement, assistance or an intervention strategy. The resident, his/her legal representative (if applicable) and others chosen by the resident shall be actively involved in the development of the service plan, unless he/she is unable or unwilling to participate. There shall be documentation in the resident's record identifying who participated in the development of the service plan. The plan shall describe strategies and approaches to meet the resident's needs, names of who will arrange and/or deliver services, when and how often services will be provided and goals to improve or maintain the resident's level of functioning. Residents shall be encouraged to be as independent as possible in their functioning, including ADLs and normal household tasks if they choose, unless contraindicated by the resident's duly authorized licensed practitioner. The service plan shall be modified, as necessary, based upon identified changes. Residents shall never be required to perform activities specified in the residential service plan or any other activities and cannot be used to replace paid staff.
- 11.2.3** **Progress notes.** The facility shall maintain ongoing signed and dated progress notes at least monthly, on implementation of the service plan and for any significant changes in the resident's life including any increases or declines in the resident's physical and mental functioning that should be considered at the time of reassessment or adjustment in the service plan. Progress notes shall begin within twenty-four (24) hours of

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admission and shall include an initial summary of basic care needs, circumstances of resident's placement and resident's adjustment to the facility.

- 11.3 Transportation.** The facility shall provide or arrange transportation to medical and other appointments.
- 11.4 First aid kit.** A first aid kit containing supplies for treatment of minor injuries, such as cuts, scrapes or first-degree burns, shall be available in the facility. All staff shall be instructed in the use of any item in the kit.

12 MANAGEMENT OF RESIDENT PERSONAL ACCOUNTS

- 12.1 Written permission.** The licensee or his/her representative may only manage personal accounts for a resident if requested to do so, in writing, by the resident or the resident's legal representative.
- 12.2 Documentation.** The provider must maintain and document an accounting of the funds, with supporting documentation for each expenditure that exceeds \$2.00.

Under no circumstances shall the personal funds of any resident, beyond what the provider receives for monthly payments, be used for the operating costs of the facility or the personal expenses of the provider or his/her representative.

- 12.3 Commingling.** Residents' personal funds shall not be commingled with the business funds of the facility or with the personal funds or accounts of the owner, any member of the owner's family or any employee of the facility.

13 RESIDENT AND OTHER RECORDS

- 13.1 Summary sheets.** There shall be a summary sheet maintained for each resident that includes applicable information, including the resident's name, birth date, date of admission, duly authorized licensed practitioner's name, address and telephone number, nearest relative or friend's name, address and telephone number, person to be notified in an emergency, their name, address and telephone number, day program name, telephone number, address and contact person, date of discharge or death and significant medical/social issues.
- 13.2 Resident records.** There shall be a record maintained for each resident that contains applicable information on physical and mental condition, behavior, mood, eating habits, incidents or accidents, documented proof of guardianship, conservatorship, representative payee, power of attorney or other legal representative, and the dates of medical examinations, other medical and dental treatment and drugs prescribed.
- 13.3 Discharge summary.** Discharge summaries must be completed in conjunction with the resident and/or guardian. Documentation shall include, but not be limited to the following:

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13.3.1 Reason for discharge; and

13.3.2 Targeted living arrangement.

13.4 Record of personal property. The provider shall maintain a list of each resident's property including items of personal value.

13.5 Employee records for a corporation, partnership, association or an entity other than an individual. For any provider that is a corporation, partnership, association or an entity other than an individual, the Department may request that reasonable personnel policies and records be kept documenting that employees have been trained and are competent and performing their duties consistent with these regulations.

14 SAFETY STANDARDS

14.1 Fire safety plans. Each facility must have a fire safety plan. The fire safety plan and any changes in the plan are to be developed in conjunction with and approved by, local or state fire authorities. *[Class III]*

14.2 Elements of a fire safety plan. The plan shall note steps to be taken, location of emergency exits, evacuation procedures and the telephone numbers of police, fire, ambulance and duly authorized licensed practitioners or other individuals to contact in an emergency. The fire safety plan shall be posted conspicuously in the facility.

14.3 Drills or rehearsals.

14.3.1 Timed drills, as described in the applicable chapters of the NFPA Life Safety Code, must be used in facilities with more than 3 beds to determine a facility's capability to evacuate its residents, unless the facility has elected to complete evacuation scores in lieu of timed drills in accordance with the standards described in the NFPA Life Safety Code 101A or when timed drills are not required pursuant to the Life Safety Code. When a new resident has participated in a timed drill in another residential care facility within the previous 2 months, the results of that drill may be used to determine evacuation capability in the resident's current facility for a period of up to 4 months. *[Class II]*

14.3.2 Facilities with more than 3 beds shall conduct drills or rehearsals of the emergency steps to be taken at irregular times of the day, at least 6 (six) times per year spaced throughout the year. Two of the six drills must be conducted while residents are asleep. *[Class II]*

14.4 Record of drills or rehearsals. A record shall be kept on a form provided by the Department showing the date and time of each drill. Providers shall be knowledgeable about and shall inform staff, if applicable, about the use of fire safety equipment in the facility. At the time of admission and on a periodic basis, residents shall be informed of emergency procedures. *[Class II]*

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- 14.5 Free-standing, solid fuel burning stoves.** Freestanding, solid fuel burning stoves (including wood and coal) are permitted in living areas, but not in bedrooms. They must be installed within NFPA No. 211 guidelines or as regulated by the Solid Fuel Board of Maine. Guidelines contained in NFPA No. 211 may be obtained by contacting the Office of the State Fire Marshal. *[Class III]*
- 14.6 Portable electric heaters.** Portable closed liquid electric heaters may be used if approved by the Office of the State Fire Marshal. No radiant or quartz heaters shall be used. *[Class III]*
- 14.7 Extension cords.** Extension cords are prohibited, except for those cords that have a fuse mechanism. *[Class III]*
- 14.8 Smoke Detectors.** Smoke detectors shall be functional at all times. *[Class I]*

15 NUTRITION AND HEALTH

- 15.1 Quality and quantity of food.** The facility must offer each resident a nourishing, well-balanced diet that meets the daily nutritional and special dietary needs of each resident and that meets the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.
- 15.2 Resident participation in meal planning and preparation.** Residents shall be encouraged to participate in food planning and preparation, as appropriate.
- 15.3 Second-grade products.** Second-grade products such as unlabeled canned goods, home canned goods, improperly sealed or unsealed containers or packages, outdated food and similar foods shall not be used. *(Class III)*
- 15.4 Food supplies.** Supplies of perishable foods for a forty-eight (48) hour period and supplies of non-perishable foods for a three (3) day period shall be on hand to meet the requirements of the planned menus.
- 15.5 Residents with communicable diseases.** No resident with a communicable disease shall be admitted if that resident's condition or behavior endangers the health and welfare of other residents and no accommodation can be made to protect other residents. If an accommodation such as Standard Precautions reduces or eliminates the risk of exposure, then accommodations shall be made.

16 LIVING AREA AND SLEEPING ACCOMMODATIONS

- 16.1 Living and dining areas.** Residents shall be provided an area for dining and relaxation sufficient in size to accommodate the provider's family/staff and the residents. Comfortable, non-folding chairs must be provided. The rooms shall be well lighted and free of hazards. A television set for use by the residents shall be available.

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16.2 Bedrooms.

- 16.2.1** For facilities initially licensed on or after May 29, 1998, a minimum of one hundred (100) square feet of usable floor space shall be provided in a single bedroom. A minimum of eighty (80) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.
- 16.2.2** For all facilities initially licensed before May 29, 1998, a minimum of eighty (80) square feet of usable floor space shall be provided in a single bedroom. A minimum of seventy (70) square feet of usable floor space per person shall be provided in multiple occupancy bedrooms.
- 16.2.3** Usable floor space shall be calculated only for that floor space having a ceiling height of a minimum of six (6) feet, except as provided in Section 16.2.4. Corridors, passageways, vestibules, alcoves, closets and wardrobe space shall be excluded from the calculations of usable floor space.
- 16.2.4** Usable floor space shall include on a 2:1 basis the areas having a ceiling height of between four (4) and six (6) feet. (Two [2] square feet yields one [1] usable square foot.) Up to twenty (20) square feet of this area (yielding up to ten [10] square feet) may be counted toward usable floor space for the room.
- 16.2.5** There shall be no more than two (2) people in each room. Couples who are both residents of the facility have the right to share a room.
- 16.2.6** Each resident bedroom shall have a solid door that can be closed for privacy.
- 16.2.7** Each resident bedroom shall have at least one (1) exterior wall and a window glass equal to at least one tenth (1/10) of the minimum required floor space per Sections 16.2.1 and 16.2.2. Windows shall be operable and equipped with window shades or an equivalent and curtains or drapes that provide privacy. Window covers must be kept in good repair. In air-conditioned buildings, at least one window in each room must be able to be opened.
- 16.2.8** Each resident bedroom shall have direct access to a corridor without passing through a bathroom or another resident bedroom. No resident room shall be used for access to other rooms or corridors. *[Class III]*
- 16.2.9** Each resident shall be provided with adequate closet, locker or wardrobe space for hanging clothing.
- 16.2.10** Each resident shall be offered a bed and mattress that is at least thirty-six (36) inches wide, substantially constructed and in good repair. Rollaway beds, metal cots or folding beds do not meet this requirement.

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- 16.2.11** Beds shall be placed so they are easily serviceable and not subjected to extremes of heat or cold. No bed shall be placed within three (3) feet of a heating unit, unless the unit is properly protected.
- 16.2.12** For each bed there shall be offered:
- 16.2.12.1** At least two (2) dresser drawers;
 - 16.2.12.2** A comfortable non-folding chair in good repair;
 - 16.2.12.3** A bedside table; and
 - 16.2.12.4** A reading lamp.
- 16.2.13** The facility shall permit and encourage residents to use their own furnishings, space permitting.
- 16.2.14** For residents who need assistance with personal housekeeping, resident rooms and furniture shall be regularly cleaned and well maintained. Resident rooms shall be well lighted and in good repair.
- 16.2.15** There must be a direct source of heat to each bedroom.
- 16.2.16** There shall be an adequate towel, linen and bedding supply in addition to those in use, so that a complete linen change is available in the facility at all times.
- 16.2.17** Residents shall not share bedrooms with members of the provider's family who are not receiving assisted living services, unless the facility obtains written permission from the Department. Permission will be granted if the arrangement is in the resident's best interest and is acceptable to the resident or the resident's guardian or conservator.
- 16.3 Renting space.** The distinct part of the facility licensed pursuant to these regulations shall have no rented apartments, rooms or space for persons other than residents, except when used by the licensee, administrator, immediate family members or employees of the facility.

17 SANITATION AND SAFETY

- 17.1 Cleanliness.** The facility must be kept clean and shall be maintained in a condition ensuring the health and safety of residents. All refuse collected in common areas or from resident's rooms shall be stored in cleanable, rodent-proof, covered containers, pending removal. *[Class III]*
- 17.1.1** The facility and surrounding premises shall show evidence of routine maintenance and housekeeping and repair of wear and tear shall be made in a timely fashion.
 - 17.1.2** The administrator shall take immediate steps to correct any condition, in the physical facility or on the premises, which poses a danger to a resident's life, health and/or safety. *[Classes II/III]*

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- 17.2 Insect and rodent control.** There shall be no evidence of rodent or insect infestation. All reasonable precautions will be taken in maintaining a safe, sanitary and comfortable living environment in regards to controlling insects and rodents in the facility. Doors and windows used for ventilation must be screened.
- 17.3 Food safety and sanitation.** Food shall be stored, prepared and served in a safe and sanitary manner. *[Class III]*
- 17.3.1** Kitchen and food preparation areas shall be located away from possible food contamination sources. *[Class III]*
- 17.3.2** Kitchen and food preparation areas must be clean, and food stored so as to be free from spoilage and contamination. *[Class III]*
- 17.3.3** All equipment, dishes, glassware and cooking utensils shall be in good repair. *[Class III]*
- 17.3.4** Refrigerator temperature shall not exceed forty-one degrees (41°) Fahrenheit. *[Class II]*
- 17.4 Bathrooms.** Bathrooms must be safe, sanitary and in good repair.
- 17.4.1** Adequate indoor bathing and flush toilet facilities for the number of residents in the facility must be provided. For all facilities licensed on or after the effective date of these regulations, a bathroom equipped with flush toilets and hand washing facilities at a ratio of at least one (1) flush toilet for each six (6) users shall be available.
- 17.4.2** Bathing facilities shall afford privacy.
- 17.4.3** If a resident needs grab bars to bathe safely, a bathing facility equipped with grab bars that meet the Americans with Disabilities Act standards will be required.
- 17.4.4** Facilities shall supply a sanitary means for washing and drying hands in bathrooms.
- 17.5 Telephone.** There must be a listed telephone available to all residents.
- 17.6 Heat.** Resident areas of the facility shall be maintained at a temperature of, at least, seventy degrees (70°) Fahrenheit or higher as necessary to ensure the comfort of the residents. Thermometers shall be placed in all resident areas. This does not apply to bedrooms where residents control the temperature. *[Class III]*
- 17.7 Hot water.** Water temperatures in resident areas shall not exceed one hundred twenty degrees (120°) Fahrenheit. Hot water shall be supplied in adequate quantities. *[Class III]*
- 17.8 Exits.** In facilities licensed prior to June 1, 1989, there must be at least two (2) usable exits that are remote from each other. In facilities initially licensed on or after June 1, 1989, there must be at

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- least two (2) usable exit doors that are remote from each other. Exits must be clear of obstructions. *[Class III]*
- 17.9 Handrails.** Inside and outside stairs are required to have handrails. Handrails on each side of the stairs may be required to meet the needs of residents. *[Class III]*
- 17.10 Private water supply.** A private water supply shall be tested annually and a satisfactory result obtained. The Department will furnish the applicant with forms for water testing which must be submitted to the Division of Health Engineering. No license shall be issued to a facility that does not get its water from a municipal water system until:
- 17.10.1** A water analysis report has been obtained, indicating that the water supply meets the standards of the Division of Health Engineering, Department of Human Services; or
- 17.10.2** An alternative source of water that meets those standards will be used until a satisfactory water analysis report is obtained. The alternate water source must be approved in writing by the Department. *[Class III]*
- 17.11 Poisonous and toxic materials.** When not in use, poisonous and toxic materials such as cleaning solutions, compounds and other non-food supplies, shall be stored in compartments which are used for no other purpose. They shall be separated from the food storage and preparation areas, clean equipment and utensil storage rooms and medication storage areas. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials. All containers must be properly labeled for identification. *[Class III]*
- 17.12 Animals.** There shall be proof of rabies vaccinations for household pets. Pets must not present a danger to residents or guests. The facility shall be free of pet odors and waste shall be disposed of regularly. *[Class III]*
- 17.13 Dryer ventilation.** Dryers shall be vented to the exterior of the building. *[Class III]*